

## **Claim Rejection**

Claims 1-4 have been rejected under the authority of 35 USC 103(a) as obvious over the teaching of Bracken in view of Dyrud et al. Applicant acknowledges the relevance of Bracken and Dyrud et al. and has authorized the amendment of his claim 1 in view of said relevance.

Specifically, Applicant has directed that claim 1 be amended to recite that both ends of each pair of elastic bands be affixed to the mask at points of attachment on each of both sides of the mask and that the mask be adjustably securable to the patient by pulling the ends anteriorly through the points of attachment.

Support for the amendment of claim 1 can be found in the first two full paragraphs of page 4 of the specification.

With specific regard to the references, The Bracken mask is designed for multiple use for the ambulatory patient and is intended to facilitate the administration of medication. It apparently represents an improvement over earlier masks by providing a “crown piece,” which provides a comfortable and secure fit while permitting the patient increased mobility during the course of treatment. An adjustment mechanism, such as buckle 70, is used to customize the fit of the mask to the patient’s head.

By providing ear loops, the Dyrud et al. mask is similar to the claimed mask, but the Dyrud et al. mask is a filtration mask. It functions, “passively” and is not designed to “actively” deliver oxygen or medication. It is apparently adjustable to the patient’s head by utilizing clip 38 or by pulling posteriorally on band 24, allowing it to pass through orifices 32. Furthermore, the Dyrud et al. ear loops are continuous with a band that goes

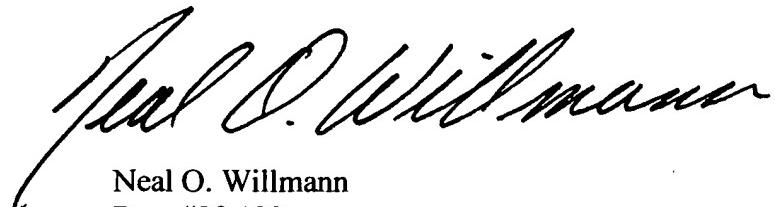
over the head that is used for drop-down support. This allows the user to remove the mask, then re-install it, *ad infinitum*. This is not the purpose of the claimed mask.

The purpose of the claimed mask is to facilitate the administration of oxygen to a patient in a supine position, a patient who may or may not have spinal injuries and therefore should be moved as little as possible. The features of the claimed mask permit the administrator to position the mask over the nose and mouth of the patient, attach the mask to the patient by looping a pair of elastic bands attached to the mask around the patient's ears and effecting final adjustment of the mask by anteriorally pulling the loose ends of the elastic bands.

Neither of the masks described by Bracken and Dyrud et al. is truly intended or designed for the administration of oxygen to a comatose or semi-comatose patient; nor is either equipped to effect adjustment by anteriorally pulling or tugging on the loose ends of the elastic bands, drawing them through the points of attachment on the mask. It is this adjustment feature, introduced into claim 1 by the foregoing amendment, that distinguishes the claimed mask from those of the prior art, and it is this adjustment feature that renders claim 1, and those dependent therefrom, patentable. Accordingly, Applicant hereby requests that the Examiner enter claim 1 as amended, appreciate its distinction over the prior art, reconsider the prevailing rejection and issue a notice of allowance.

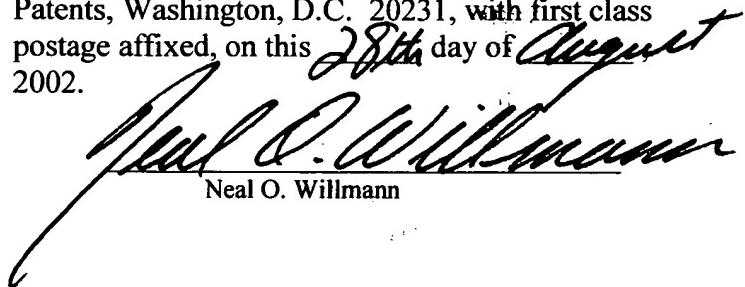
If the Examiner has any continuing concerns or questions with regard to the proposed amendment or accompanying comments, he is encouraged to contact Applicant's attorney by phone, fax or e-mail.

Respectfully submitted,



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Reg. #28,132

I hereby certify that this correspondence is being deposited with the United States Postal Service, addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231, with first class postage affixed, on this 28<sup>th</sup> day of August 2002.



Neal O. Willmann

**VERSION WITH MARKINGS TO SHOW CHANGES MADE**

**In the Claims:**

Claim 1 has been amended as follows:

An oxygen mask having an improved means for being secured over the nose and mouth of a patient, the improvement comprising: a pair of elastic bands, both ends of each pair affixed at points of attachment to each of both sides of said mask, said bands extendible to loop over and around each ear of the patient[.] and adjustably securable to said patient by pulling the ends anteriorally through said points of attachment.